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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re: Toyota Motor Corp.
Unintended Acceleration Marketing,
Sales Practices, And Products
Liability Litigation

This document relates to:

DWAYNE RHOOMS, et. al. vs.
TOYOTA MOTOR SALES U.S.A.,
Inc., et. al.

Case No. CV10-2944-JHN (AJWx)

CASE NO. 8:10-ML-2151 JVS (FMOx)

**AMENDED NOTICE OF APPLICATION FOR
LEAVE TO WITHDRAW AS ATTORNEY OF
RECORD FOR PLAINTIFFS DWAYNE
RHOOMS, DENESE RHOOMS, AND KENNE
RHOOMS**

The law firm of Robinson, Calcagnie & Robinson (hereinafter "the firm"), through Shannon Lukei, Esq., respectfully moves for leave to withdraw as counsel of record for Plaintiffs Dwayne Rhooms, Denese Rhooms, and Kenne Rhooms (hereinafter "Plaintiffs"). This motion is made on the following grounds:

1. A personality conflict has arisen between Plaintiffs and Counsel, making it unreasonably difficult for the firm to continue to represent Plaintiffs in this action;

2. Granting the herein motion will not delay trial in the case and would not otherwise be inequitable;
3. Plaintiffs were notified of the herein motion for leave to withdraw via federal express and certified mail at their last known residential address, which is 104 Palm Beach Place, Suite 1, Virginia Beach, VA 23452;
4. The notice to Plaintiffs also advised that they should retain other counsel; and
5. The notice to Plaintiffs also advised upon the entry of the order of withdrawal, the party or new counsel shall file with the Clerk of the Court a supplementary appearance that provides the address at which the party and/or new counsel may receive service of documents related to the case.

This Application is based on this Notice, the attached Memorandum of Points and Authorities in Support of this Application, the accompanying Declaration of Shannon Lukei, Esq., and upon such additional evidence, documentary or otherwise, as may be presented at any hearing that may be conducted on this matter.

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RELIEF REQUESTED

Counsel for Plaintiffs requests that the court grant leave to withdraw as counsel of record for Plaintiffs Dwayne Rhooms, Denese Rhooms, and Kenne Rhooms.

Dated: October 12, 2010

Respectfully Submitted,
Robinson, Calcagnie & Robinson



MARK P. ROBINSON, JR. (SBN: 054426)
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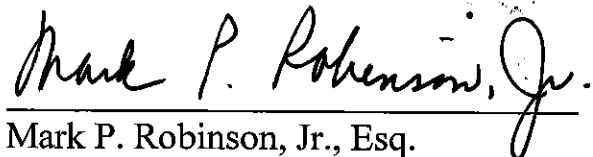
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that Plaintiffs DWAYNE RHOOMS, DENESE RHOOMS AND KENNE RHOOMS have been provided with a copy of this **NOTICE AND MOTION FOR LEAVE TO WITHDRAW AS ATTORNEY OF RECORD FOR PLAINTIFFS DWAYNE RHOOMS, DENESE RHOOMS, AND KENNE RHOOMS** and notified of all deadlines and pending court appearances by certified mail and federal express at Plaintiff's last known address, which is 104 Palm Beach Place, Suite 1, Virginia Beach, VA 23452.

ALSO, I HEREBY CERTIFY that October 12, 2010, I electronically filed the Notice and Motion for Leave to Withdraw as Attorney of Record for Plaintiffs DWAYNE RHOOMS, DENESE RHOOMS AND KENNE RHOOMS with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to all counsel of record.

Dated: October 12, 2010

Robinson, Calcagnie & Robinson



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**APPLICATION FOR LEAVE TO
WITHDRAW AS ATTORNEY OF
RECORD FOR PLAINTIFFS DWAYNE
RHOOMS, DENESE RHOOMS, AND
KENNE RHOOMS; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Case No. CV10-2944-JHN (AJWx)

I. INTRODUCTION

The firm of Robinson, Calcagnie & Robinson represents Plaintiffs Dwayne Rhooms, Denese Rhooms, and Kenne Rhooms ("Plaintiffs"), in this auto products liability action presently pending before this Court. The action, which was filed on April 20, 2010, alleges products liability, negligence, breach of warranty, fraudulent concealment and survival claims in connection with the accident that occurred on September 20, 2008, in which Plaintiffs' father, Roney Rhooms ("Decedent")

1 suffered fatal injuries. The named Defendants are the manufacturers of the vehicle
2 Decedent was driving when the accident occurred.
3

4 Good cause exists for permitting withdrawal of Robinson, Calcagnie &
5 Robinson as counsel for Plaintiffs, in that a personality conflict has arisen, making
6 it unreasonably difficult for the firm to continue to represent these clients in this
7 action. Minimal discovery has been completed in this case and no trial date has
8 been set, therefore Plaintiffs will not be prejudiced by the proposed withdrawal.
9

10 **II. BACKGROUND**

11 The basic facts and procedural history of this case are not in dispute.
12 This action was filed in this MDL on or about April 20, 2010. Defendants filed an
13 omnibus Motion to Dismiss this and other individual personal injury and wrongful
14 death cases on September 14, 2010. The motion will be heard on November 19,
15 2010. Phase 1 discovery is ongoing; however, only minimal discovery specific to
16 these Plaintiffs has been conducted.
17
18
19

20 **III. POINTS AND AUTHORITIES**

21 Civil Local Rule 83-2.9.2.1 provides:

22 Motion for Withdrawal. An attorney may not withdraw as counsel
23 except by leave of court. An application for leave to withdraw must be
24 made upon written notice given reasonably in advance to the client and
25 to all other parties who have appeared in the action.

26 The American Bar Association Model Rules of Professional Conduct offers
27 additional guidance for consideration of applications for leave to withdraw as
28

1 attorney of record. Specifically, ABA-AMRPC Rule 1.16(b), provides that a
2 lawyer may withdraw from representing a client if withdrawal can be accomplished
3 without material adverse effect on the interests of the client. Hence, the legal
4 standards applicable to the herein motion lend support for the relief requested
5 herein.
6

7
8 The ABA-AMRPC Rule 1.16(b) states, in pertinent part, the following with
9 respect to the termination of representation:
10

11 (b) Except as stated in paragraph (c), a lawyer may withdraw
12 from representing a client if:

13 (1) withdrawal can be accomplished without material
14 adverse effect on the interests of the client;

15 ***** or

16 (7) other good cause for withdrawal exists.
17

18 According to Schwarzer, Tashima & Wagstaffe, CAL. PRAC. GUIDE: FED.
19 CIV. PRO. BEFORE TRIAL (The Rutter Group 2010):
20

21 [12:192] Grounds: The moving papers must disclose adequate
22 grounds for excusing counsel from further representation in the
23 particular case. Federal courts generally look to applicable state rules
24 of professional conduct.

25 The applicable state rules of professional conduct are discussed in the ethics
26 treatise Vapnek, Tuft, Peck & Wiener, CAL. PRAC. GUIDE: PROFESSIONAL
27 RESPONSIBILITY (The Rutter Group 2010):
28

[10:24.5] Confidentiality/privilege limitations on attorney's

1 ability to disclose basis for withdrawal: Attorneys are bound to
2 preserve client confidences even when seeking to be relieved as
3 counsel. [See CRC 3.1362 (c)—attorney's declaration in support of
4 withdrawal motion cannot compromise attorney-client confidentiality
5 (discussed at ¶ 10:100 ff.); CRPC 3-700(A)—attorney withdrawal
6 must not prejudice client (discussed at ¶ 10:20 ff.); San Diego Bar
Ass'n Form.Opn. 1990-2—duty of confidentiality applies to both
mandatory and permissive withdrawal]

7 ...
8 e. [10:45] Unreasonably difficult representation: Withdrawal
9 is permitted where "by other conduct" the client makes it
10 "unreasonably difficult for the attorney to carry out the employment
11 effectively." [Ca Professional Conduct Rule 3-700(C)(1)(d)]

12 (1) Application

13 (a) [10:46] Personality clash: A withdrawal motion may
14 properly be based simply on a personality clash with the client. The
15 breakdown in the attorney-client relationship is ground for allowing
the attorney to withdraw. [Estate of Falco v. Decker (1987) 188
Cal.App.3d 1004, 1014, 233 Cal.Rptr. 807, 813]...

16 2) [10:100] Supporting declaration: A declaration showing
17 why a substitution of attorneys by consent could not be obtained must
18 accompany the notice. The declaration must be stated "in general terms
19 and without compromising the confidentiality of the attorney-client
20 relationship." [Ca Rules of Court Rule 376(b) (emphasis added); see
also ¶7:1 ff. (attorney's duty of confidentiality)]

21 b) [10:101] Permitted statements: It is permissible to state:

- 22 -- the client has not paid agreed fees;
23 -- a personality conflict has arisen, making it unreasonably
24 difficult to represent the client.

25 But it is not permissible to state:

- 26 -- the client has refused advice to settle the case;
27 -- the client wants the attorney to act unethically, etc.
28

1
2 c) [10:101.1] Compare--court may require demonstration of good
3 faith basis for motion: Although an attorney is not obligated to
4 disclose confidential information in connection with a withdrawal
motion, the motion must be brought in "good faith."

5 For example, the court is not required to accept a blanket claim
6 of conflict and "rubber stamp" a withdrawal motion where it appears
7 the motion is being used as a delay tactic. Demonstrating "good faith"
8 may require counsel to describe, in general terms, the nature of the
9 conflict. [*Manfredi & Levine v. Sup.Ct. (Barels)* (1998) 66
10 Cal.App.4th 1128, 1133-1134, 78 Cal.Rptr.2d 494, 498; and see
discussion at ¶7:32.1a ff.]

11 1/ [10:101.2] In camera hearing to protect confidential
12 information: If the court demands disclosure of confidential
13 information in connection with a withdrawal motion, counsel can
14 request an in camera hearing to provide the court with additional
15 details. (The court is not required to offer such a hearing sua sponte.)
[See *Manfredi & Levine v. Sup.Ct. (Barels)*, supra, 66 Cal.App.4th at
1136, 78 Cal.Rptr.2d at 500]"

16 As evidenced by the attached Declaration of Shannon Lukei, Esq., good
17 cause for withdrawal exists, as a personality conflict has arisen, making it
18 unreasonably difficult for the firm to continue to represent the client. In addition,
19 withdrawal can be accomplished without material adverse effect on the interests of
20 the clients. Minimal discovery has been completed in this case and no trial is set in
21 the present action. Therefore the firm of Robinson, Calcagnie & Robinson
22 respectfully seeks leave of the Court to withdraw from this action now, before
23 discovery has been completed and a trial date has been set. Plaintiffs have adequate
24 time to find substitute counsel if they so desire, and withdrawal at this stage will not
25 cause any delay or prejudice to Plaintiffs.
26
27
28

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Case No. CV10-2944-JHN (AJWx)

CASE NO. 8:10-ML-2151 JVS (FMOx)

**AMENDED DECLARATION OF
SHANNON LUKEI, ESQ. IN SUPPORT
OF APPLICATION FOR LEAVE TO
WITHDRAW AS ATTORNEY OF
RECORD FOR PLAINTIFFS DWAYNE
RHOOMS, DENESE RHOOMS, AND
KENNE RHOOMS**

I, Shannon Lukei, declare and state as follows:

1. I am an attorney duly licensed to practice law in the State of California
and admitted to practice before this Court, and an attorney in the law firm of
Robinson, Calcagnie & Robinson, counsel of record for Plaintiffs in this action.

1 2. The facts contained herein are within my personal knowledge, and if
2 called upon as a witness I could and would competently testify to the following
3 under oath.
4

5 3. Since the complaint was filed in this action on or about April 20, 2010,
6 a personality conflict has arisen between Plaintiffs and Counsel, making it
7 unreasonably difficult for the firm to continue to represent Plaintiffs in this action.
8

9 4. Granting the herein motion will not delay trial in the case and would
10 not otherwise be inequitable.
11

12 5. Plaintiffs were given notice of this application on October 12, 2010,
13 through correspondence and a copy of this application, sent via federal express and
14 certified mail to their last known residential address.
15

16 6. The notice to Plaintiffs also advised them that they should retain other
17 counsel.
18

19 7. The notice to Plaintiffs also advised that upon the entry of the order of
20 withdrawal, the party or new counsel shall file with the Clerk of the Court a
21 supplementary appearance that provides the address at which the party and/or new
22 counsel may receive service of documents related to the case.
23

24 8. Minimal discovery has been completed in this case and no trial date
25 has been set. Therefore, withdrawal will not cause any delay in trial, will not
26 adversely affect the clients' interests and will not otherwise be inequitable.
27
28

